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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOHANNA MCGHEHEY,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 49A02-0712-CR-1053

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Paula Lopossa, Judge Pro Tempore  
Cause No.49F08-0709-CM-197676

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**June 6, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issue

Following a bench trial, Johanna McGhehey appeals her conviction of disorderly conduct, a Class B misdemeanor. On appeal, McGhehey raises one issue, which we restate as whether sufficient evidence supports her conviction. Concluding that the State did not present sufficient evidence to prove the unreasonable noise element of disorderly conduct beyond a reasonable doubt, we reverse and remand.

### Facts and Procedural History

On September 22, 2007, Officer Steven Spina of the Indianapolis Metropolitan Police Department responded to a domestic disturbance between two people, later identified as McGhehey and Ryan Bauer. Shortly after arriving at the scene, Officer Spina discovered that McGhehey and Bauer had outstanding warrants, so he placed both of them under arrest and arranged for a police wagon to transport them to jail.

When McGhehey was inside the police wagon, she began yelling at Bauer, stating several times something to the effect of “she had fifteen brothers that was [sic] going to kick his ass for getting her pregnant.” Transcript at 11. Officer Spina warned McGhehey to be quiet, but she did not comply. Instead, McGhehey “started in” on Officer Spina, *id.* at 13, telling him he was a “corn feed [sic] farm boy” and “power hungry,” *id.* at 14. Officer Spina warned McGhehey to be quiet three more times, but she persisted. At some point after one of these warnings, Officer Spina cited McGhehey for disorderly conduct and began preparing paperwork related to that citation. While Officer Spina was preparing the paperwork, McGhehey continued making derogatory statements toward Officer Spina, causing the driver

of the police wagon to leave before the paperwork was completed. According to Officer Spina, the driver “didn’t want to wait around because of the way [McGhehey] was acting at the scene there.” Id. at 19.

The State charged McGhehey with intimidation, a Class A misdemeanor, relating to the statements she made to Bauer and with disorderly conduct, a Class B misdemeanor, relating to the statements she made to Officer Spina. At trial, Officer Spina testified to the events described above, and McGhehey testified to her version of the events. At the close of the State’s case-in-chief, the trial court granted McGhehey’s motion for involuntary dismissal of the intimidation charge. McGhehey then proceeded with her case-in-chief, after which the trial court found her guilty of disorderly conduct and sentenced her to time already served. McGhehey now appeals.

### Discussion and Decision

McGhehey argues insufficient evidence supports her disorderly conduct conviction. In reviewing whether sufficient evidence supports a conviction, “appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict.” McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). It is the trier of fact’s duty to weigh the evidence to determine whether the State has proved each element of the offense beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). Accordingly, we “must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” McHenry, 820 N.E.2d at 126 (quoting Tobar v. State, 740 N.E.2d 109, 111-12 (Ind.

2000)).

To convict McGhehey of disorderly conduct as a Class B misdemeanor, the State had to prove beyond a reasonable doubt that McGhehey recklessly, knowingly, or intentionally made unreasonable noise and continued to do so after being asked to stop. See Ind. Code § 35-45-1-3(a). McGhehey's sole challenge is to the unreasonable noise element. In this respect, we start with the observation that the unreasonable noise element of the disorderly conduct statute was designed to prevent "the harm which flows from the volume of the expression and not its substance." Price v. State, 622 N.E.2d 954, 966 (Ind. 1993). This observation implies that determining whether noise is unreasonable turns on identifying the harm flowing from it; such examples include noise that aggravates the trauma of injured parties, impedes the efforts of medical personal, or disrupts police investigations. See Whittington v. State, 669 N.E.2d 1363, 1367 (Ind. 1996). Several cases further illustrate this latter example.

In Blackman v. State, 868 N.E.2d 579, 583-84 (Ind. Ct. App. 2007), trans. denied, the defendant shouted curses at a police officer while the officer conducted a pat-down search. The defendant continued shouting after the search was over and refused to leave the scene despite being told to do so several times by the officer and by another officer who was in the process of arresting the defendant's brother. By that time, the defendant's shouting drew a crowd and caused several passersby to stop and ask questions. In affirming the defendant's conviction of disorderly conduct, a panel of this court concluded there was sufficient evidence that the defendant made unreasonable noise because "the sheer volume of [the

defendant's] outbursts disrupted the officers' investigation and attracted unwanted attention.”  
Id. at 584.

In Johnson v. State, 719 N.E.2d 445, 447-48 (Ind. Ct. App. 1999), the defendant's mother had been arguing with the defendant and contacted the police. When two officers arrived at the scene and began asking questions, the defendant responded by speaking so loudly that the officers were prevented from asking additional questions. At that point, one of the officers warned the defendant to be quiet, but he persisted. In affirming the defendant's adjudication of delinquency for disorderly conduct, a panel of this court concluded there was sufficient evidence that the defendant's noise was unreasonable because “it prevented the police officers from asking additional questions in an effort to resolve the situation.” Id. at 448.

Our decisions in Blackman and Johnson make clear that the State may satisfy the unreasonable noise element based on evidence that the defendant's noise disrupted a police investigation. The State pursued a similar theory in this case, namely, that McGhehey's noise impeded Officer Spina from performing his duties. See Tr. at 36 (prosecuting attorney arguing during his closing argument that McGhehey's noise “did disrupt the officer's duties as he had to return to the wagon, tell her to stop on multiple occasions when he had other duties he had to do”). Our review of the record indicates that although Officer Spina testified that McGhehey's statements were disruptive, he clarified that the disruption occurred only after he had cited her for disorderly conduct:

Q: So she became loud. But in this loudness did she impair your ability to do your police duties?

A: I would say somewhat because, because I was already writing for the disorderly conduct and the intimidation. The wagon driver didn't wait around for me to finish my paperwork because she wanted to get her moving and down to [jail] so I would say yes.

...

Q: Okay and so, so her being in the back of this van being loud didn't keep you from anything you needed to do?

A: Well like I said I had to meet up with the wagon later on to actually give her the paperwork because she didn't want to wait around because of the way she was acting at the scene there.

Id. at 17-19 (emphasis added). The remainder of the record contains no direct evidence indicating that McGhehey's comments were disruptive before Officer Spina cited her for disorderly conduct.

We note that a lack of direct evidence on this point does not foreclose inferences that McGhehey's noise disrupted some of the other officers. In this respect, Officer Spina testified that some of the other officers were preparing paperwork relating to Bauer's arrest and that "there were passer-bys [sic] that took notice of a person yelling in the back of a paddy wagon," id. at 19, which suggests the other officers may have had to attend to the passersby, thus diverting them from their other duties, cf. Blackman, 868 N.E.2d at 584 (observing that the defendant's noise "drew a crowd; a neighborhood resident emerged from her backyard; other neighbors emerged from their homes; passing drivers slowed and rolled down their car windows; and pedestrians stopped to make inquiries of the officers," all of which diverted the officers from their other duties). However, Officer Spina did not state whether these officers were preparing paperwork before or after he cited McGhehey or whether the officers had to disperse the passersby. Absent clarification regarding when these

actions occurred, we think that any conclusion that McGhehey's noise was unreasonable would be based more on speculation than it would on a reasonable inference.

We note in closing that we do not condone McGhehey's statements toward Officer Spina, and share Judge Robertson's concern that "[i]t is a sad commentary of our modern society that law enforcement officers must be subjected to insults such as those used in the present case." Evans v. State, 434 N.E.2d 940, 943 n.2 (Ind. Ct. App. 1982). Our caselaw, however, makes clear that the unreasonable noise element of disorderly conduct must be predicated on an identifiable harm flowing from the defendant's noise, and the State merely proved that the harm flowing from McGhehey's noise occurred after Officer Spina cited her for disorderly conduct. Thus, we conclude that the State did not present sufficient evidence to prove the unreasonable noise element beyond a reasonable doubt, and it follows that McGhehey's conviction must be reversed.

### Conclusion

The State did not present sufficient evidence to support McGhehey's conviction of disorderly conduct. Accordingly, we reverse and remand with instructions to vacate McGhehey's conviction.

Reversed and remanded.

BAKER, C.J., and RILEY, J., concur.